

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14 -10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

V.

AMOY INTERNATIONAL, LLC.

RESPONDENT

**RESPONDENT'S OBJECTIONS TO THE
DECLARATION OF JOHN KAMADA IN SUPPORT OF
COMPLAINANT'S REPLY TO MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Respondent Amoy International, LLC ("Amoy"), hereby objects to the Declaration of John Kamada filed in support of Complainant's Reply to Motion for Partial Summary Judgment.

An declaration is a substitute for oral testimony, and therefore must conform to the same requirements of competency as would be applicable if the declarant were to testify at trial. F.R.E. 601-02: Travelers Cas. & Sur. Co. of America v. Telstar Constr. Co., Inc., 252 F. Sup. 2d 917, 922, 923 (D. Az. 2003). It is not enough for the declarant simply to state that he or she has personal knowledge of the facts asserted. Rather, the declaration must contain facts showing the declarant's connection with the matter stated therein and establishing his or her personal knowledge of the facts alleged and the source of his or her information. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir 1989). Opinion testimony may be offered, but only if an adequate foundation for the declarant's knowledge and the basis of his or her opinion has first been established. F.R.E. 701. All declarations must be made by witnesses having personal knowledge of the facts stated therein and must state facts that would be admissible in evidence (rather than, for example, the declarant's unfounded personal opinions or conclusions). F.R.C.P. 56(e); W. Schwarzer, A. Tashima, J. Wagstaffe, Practice Guide: Federal Civil Procedure Before Trial (Nat. Ed.), § 12:57 at page 12-16 (The Rutter Group 2014).

Testimony with a proper foundation based on personal knowledge must be

based upon what the witness directly saw, heard, perceived, or otherwise experienced with his own senses. See Fed. R. Evid. 602 and Adv. Comm. Notes (1972). Moreover, a mere summary of a writing is not the best evidence to prove the content of a writing, and must be excluded. See Fed. R. Evid. 1002.

Documentary evidence may be offered, but it must first be properly authenticated by a declarant with personal knowledge of the document's genuineness and execution. Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 (9th Cir. 1990).

Of course the most basic element of admissibility is relevance. While "[n]ot all relevant evidence is admissible" (Advisory Committee Notes to F.R.E. 402), all irrelevant evidence is inadmissible. F.R.E. 402. Evidence is only relevant if it has a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence. See Fed. R. Evid. 401.

II. SPECIFIC OBJECTIONS TO JOHN KAMADA'S

DECLARATION IN SUPPORT OF COMPLAINANT'S

REPLY TO MOTION FOR PARTIAL SUMMARY

JUDGMENT

Material Objected To:	Grounds for Objections:	Ruling on the Objection
1. Kamada declaration ¶6, pg.2. "In fact, the cargo was baled used truck tires, which we knew after the cargo arrived in China and was inspected by the Chinese Customs."	1. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Kamada fails to establish his personnel knowledge that he knew the cargo was baled tires after its arrival in China or that the cargo was inspected by Chinese Customs. Kamada has not stated that he was in China when the containers arrived to personally know these facts. In ¶5 of his initial affidavit, Mr. Kamada made the same statement based on information and belief. The fact that he now makes it on personal knowledge does not change the grounds for objection. He fails to establish personal knowledge and foundation.	Sustained: _____ Overruled: _____

<p>2. Kamada Declaration, ¶9. “Subsequently, Chinese Customs opened the containers for inspection, and found that the contents were in fact goods prohibited entry into China, i.e. baled used truck tires. It seized the four containers from Maersk Line, the importing carrier, and Maersk’s notification of this fact then went to Econocaribe and Amoy.”</p>	<p>2. Lacks foundation (F.R.E. §602); hearsay (F.R.E. §§ 801, 802). Kamada fails to establish his personnel knowledge that he knew that the cargo arrived on June 17, 2013; that Chinese Customs opened the containers on or about that date; that the content were found to be goods prohibited entry into China; that Chinese Customs seized the four containers; and that Maersk notified Econocaribe and Amoy of “this fact.” Kamada has not stated that he was in China when the containers arrived to personally know these facts. In ¶9 of his initial affidavit, Mr. Kamada made this statement based on information and belief. The fact that he now makes it on personal knowledge does not change the grounds for objection. He fails to establish personal knowledge and foundation.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
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<p>3. Kamada Declaration, ¶11. "On July 9, 2013 Maersk informed Econocaribe that the consignee Victory China denied interest in the cargo, and that Amoy needed to nominate another shipper for the return bill of lading. Econocaribe immediately forwarded this information to Amoy."</p>	<p>3. Lacks foundation (F.R.E. §602); hearsay (F.R.E. § 801, 802). This paragraph appears to be based on Exhibit "H" to Complainant's Motion, an email from Maersk dated July 9, 2013. See "Undisputed Fact" no. 13, pg 5 of 16 of Complainant's Motion. Exhibit "H" does not state that "Amoy needed to nominate another shipper for the return bill of lading." The closest wording is "Pls urgently inform shipper accordingly and advise if they need to find new cnee to help them return issue." "Pls make sure shipper as cargo owner be informed the longstanding. They need to push CNEE arrange cargo delivery ASAP." Thess wordings, whatever they mean, do not support this paragraph, but confirm that it is hearsay. This statement is also found in ¶10 of Kamada's initial affidavit.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
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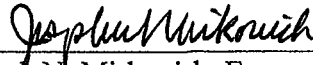
<p>4. Kamada Declaration, ¶12. “On or about June 30, 2014, Maersk notified Econocaribe that Chinese Customs released the four containers with the condition that it be shipped back to its country of origin.”</p>	<p>3. Lacks foundation (F.R.E. §602); hearsay (F.R.E. § 801, 802). Kamada fails to establish his personnel knowledge that he knew that the cargo was released on or about arrived on June 30, 2014; that Chinese Customs released the four containers with the condition that they be ship back to their country of origin. Kamada has not stated that he was in China at this time to personally know these facts. In ¶11 of his initial affidavit, Mr. Kamada made the same statement, which was based on information and belief. His stating that Maersk informed Econocaribe is still hearsay</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>
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Respectfully submitted,

Dated: February 6, 2015

RUSSELL, MIRKOVICH & MORROW

By:



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENT'S**
OBJECTIONS TO THE DECLARATION OF JOHN KAMADA IN
SUPPORT OF COMPLAINANT'S REPLY TO MOTION FOR SUMMARY
JUDGMENT was sent to the below-mentioned counsel via email on February 6,
2015.

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